

UNITED STATES DISTRICT COURT  
COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_  
THOMAS MCNIFF,  
Plaintiff

v.

\_\_\_\_\_  
TOWN OF DRACUT,  
Defendant  
\_\_\_\_\_

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)  
) C.A. No. 05CV10238 RBC  
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**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Now comes the Defendant, Town of Dracut, in the above captioned case, and hereby moves this Honorable Court pursuant to Fed. R. Civ. P. 56 to enter Summary Judgment in its favor and against the Plaintiff. As grounds for this Motion, the Defendant states that:

A. No Violation of Americans With Disability Act;

1. Plaintiff Did Not Suffer From a Disability Cognizable by the A.D.A.
2. Plaintiff Did Not Need nor Seek Accommodations for His Alleged Disability
3. Plaintiff Was Not Subject to Adverse Employment Action Due to the Alleged Disability
4. Defendant had Legitimate Non-Discriminatory Grounds for its Employment Actions

B. Plaintiff's State Law Claims Fail

1. No Discrimination Claim under Massachusetts General Laws ch. 151B.
  - a. Plaintiff Failed to Exhaust his Administrative Remedies
  - b. There is No Evidence of Discrimination
2. No Direct Right of Action Under Article CXIV of the Massachusetts Constitution
3. No Cause of Action for Civil Service Claims under Mass. Gen. L. ch. 31, sec. 15

- a. Defendant his Discretion to Bypass Employees Deemed Not Qualified
- b. Plaintiff Failed to Exhaust his Administrative Remedies

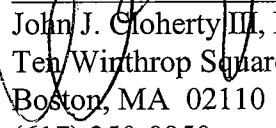
As further grounds for the Motion, the Defendant submits the accompanying Memorandum of Law, and Concise Statement of Material Facts as to which there is No Genuine Issue to be Tried, together with Exhibits, incorporated by reference herein.

WHEREFORE, the Defendant respectfully requests this Honorable Court enter Summary Judgment in favor of Defendant and against Plaintiff as to all counts of Plaintiff's complaint along with such other relief this Court deems just and proper.

Respectfully submitted,

The Defendant,  
TOWN OF DRACUT  
By its Attorneys,

**PIERCE, DAVIS & PERRITANO, LLP**



\_\_\_\_\_  
John J. Cloherty III, BBO # 566522  
Ten Winthrop Square  
Boston, MA 02110  
(617) 350-0950

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon each attorney of record, or pro se litigant, by electronic mail.

11/21/05  
Date 